

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KATHERINE SALTZBERG, an
individual, on behalf of herself, and
on behalf of all persons similarly
situated,

Plaintiff,

vs.

HOME DEPOT U.S.A., INC., a
Corporation,

Defendant.

Case No. **2:17-CV-05798**

**CLASS ACTION COMPLAINT
FOR:**

1. VIOLATION OF THE FAIR
CREDIT REPORTING ACT FOR
FAILURE TO MAKE PROPER
DISCLOSURES [15 U.S.C. § 1681, *et*
seq.] and,

2. VIOLATION OF THE FAIR
CREDIT REPORTING ACT FOR
FAILURE TO OBTAIN PROPER
AUTHORIZATION [15 U.S.C. § 1681,
et seq.].

DEMAND FOR A JURY TRIAL

1 Plaintiff Katherine Saltzberg ("PLAINTIFF"), on behalf of herself and all others
2 similarly situated, alleges on information and belief, except for her own acts and
3 knowledge, the following:

4 5 **THE PARTIES**

6 1. Defendant Home Depot U.S.A., Inc. ("DEFENDANT") is a Corporation
7 and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California.

9 2. Home Depot U.S.A., Inc., doing business as The Home Depot, owns and
10 operates home improvement retail stores. The company offers building materials, home
11 improvement, lawn and garden, kitchen, lighting, storage, and flooring design products.
12 The company was incorporated in 1989.

13 3. PLAINTIFF sought employment with one of the many Home Depot service
14 providers in March of 2016. During the application process PLAINTIFF executed a
15 background check disclosure and authorization form permitting Home Depot to obtain
16 a consumer report and conduct a background check on her.

17 4. PLAINTIFF brings this Class Action on behalf of herself and a nationwide
18 class, defined as all persons in the United States who executed DEFENDANT's standard
19 FCRA background check disclosure form that included a liability release clause (the
20 "CLASS") at any time during the period beginning five (5) years prior to the filing of
21 this Complaint and ending on the date as determined by the Court (the "CLASS
22 PERIOD")

23 24 **NATURE OF THE ACTION**

25 5. The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.* ("FCRA") provides
26 individuals with a number of rights. Specifically, pertaining to employment-related
27 background checks, the FCRA provides that a prospective employee must give valid
28 consent to the background check. The FCRA requires a signed authorization and

1 disclosure from the applicant, sometimes referred to as a “consent” form. The
2 authorization and disclosure form must be executed and signed by the applicant prior to
3 an employer requesting or conducting a background check. Importantly, no extraneous
4 information can be attached or included on the consent form. *The authorization and*
5 *disclosure must stand alone.*

6 6. In violation of 15 U.S.C. § 1681b(b)(2)(A)(I), DEFENDANT has
7 unlawfully inserted liability release provisions into forms purporting to grant
8 DEFENDANT the authority to obtain and use consumer report information for
9 employment purposes. The FCRA prohibits this practice and requires that forms
10 granting the authority to access and use consumer report information for employment
11 purposes be stand alone forms, and not include any additional information or
12 agreements. DEFENDANT’s decision to include liability release provisions in its
13 disclosure and authorization forms is contrary to the plain language of the statute and
14 unambiguous regulatory guidance from the Federal Trade Commission (“FTC”).

15 7. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii) DEFENDANT has obtained
16 consumer reports without proper authorization because the authorization and disclosure
17 form signed by PLAINTIFF failed to comply with the requirements of the FCRA. The
18 inclusion of the liability waiver in DEFENDANT’s disclosure and authorization forms
19 invalidates the purported consent and also triggers statutory damages under the FCRA
20 in the amount of up to \$1,000 for each applicant that DEFENDANT obtained a consumer
21 report without a facially valid authorization, as well as punitive damages, equitable
22 relief, and attorneys’ fees and costs.

23 24 **FACTUAL ALLEGATIONS**

25 8. PLAINTIFF applied to work for Lifetime Solutions, Inc. who provides
26 water solutions for DEFENDANT’s customers. In connection with her employment
27 application with the DEFENDANT’s third party service provider Lifetime Solutions,
28 Inc., PLAINTIFF completed DEFENDANT’s standard background check forms.

1 Following her completion of the background check forms, DEFENDANT conducted a
2 background check on PLAINTIFF and PLAINTIFF was hired to work for
3 DEFENDANT's third party service provider, Lifetime Solutions, Inc.

4 9. The background check disclosure and authorization forms disclosed that
5 DEFENDANT intended to conduct a background investigation on the applicant that
6 would involve investigating the applicant's work record, references and education. In
7 addition, the form also contained a liability release provision.

8 10. The inclusion of this release provision in the background check disclosure
9 and authorization form violates the FCRA, 15 U.S.C. § 1681, *et seq.*

10 11. Under the FCRA, it is unlawful to procure a consumer report or cause a
11 consumer report to be procured for employment purposes, unless:

- 12 (i) a clear and conspicuous disclosure has been made in writing to the
13 consumer at any time before the report is procured or caused to be
14 procured, ***in a document that consists solely of the disclosure***, that
15 (ii) a consumer report may be obtained for employment purposes; and
the consumer has authorized in writing (which authorization may be
made on the document referred to in clause(i)) the procurement of
the report.

16 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) (emphasis added).

17 12. After PLAINTIFF executed the background check disclosure and
18 authorization form in May of 2016, DEFENDANT obtained a consumer report on the
19 PLAINTIFF notwithstanding the fact that the background check disclosure and
20 authorization form was invalid under the requirements of the FCRA.

21 13. Although the disclosure required by clause (i) and the authorization required
22 by clause (ii) may be combined in a single document, the FTC has warned that the form
23 should not include any extraneous information. Further, the FTC has also specifically
24 warned that the inclusion of such a waiver in a disclosure form will violate Section
25 604(b)(2)(A) of the FCRA [15 U.S.C. §§ 1681b(b)(2)(A)], which requires that a
26 disclosure consist solely of the disclosure that a consumer report may be obtained for
27 employment purposes.

28 14. By including a liability release in its background check disclosure and

1 authorization form, DEFENDANT willfully disregarded the FTC's regulatory guidance
2 and violated 15 U.S.C. § 1681b(b)(2)(A).

3
4 **THE CLASS**

5 15. PLAINTIFF brings the First and Second Causes of Action pursuant to Fed.
6 R. Civ. Proc. 23(b)(2) and/or (3), on behalf of a nationwide Class, defined as all persons
7 in the United States who executed DEFENDANT's standard FCRA background check
8 disclosure form that included a liability release clause (the "CLASS") at any time during
9 the period beginning five (5) years prior to the filing of this Complaint and ending on the
10 date as determined by the Court (the "CLASS PERIOD"). To the extent equitable tolling
11 operates to toll claims by the CLASS against DEFENDANT, the CLASS PERIOD
12 should be adjusted accordingly.

13 16. DEFENDANT, as a matter of corporate policy, practice and procedure, and
14 in violation of The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*, intentionally,
15 knowingly, and wilfully, engaged in a practice whereby DEFENDANT uniformly,
16 unfairly, unlawfully, and deceptively instituted a practice of obtaining consumer reports
17 without valid authorization to do so.

18 17. The CLASS is so numerous that joinder of all CLASS Members is
19 impracticable.

20 18. DEFENDANT uniformly violated the rights of the CLASS by:

- 21 (a) Violating The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*,
22 by unlawfully, unfairly and/or deceptively having in place company
23 policies, practices and procedures that uniformly obtained credit
24 reports on without first obtaining valid authorization consent forms.

25 19. Common questions of law and fact exist as to members of the CLASS,
26 including, but not limited, to the following:

- 27 (a) Whether DEFENDANT required the CLASS Members to sign a
28 background check disclosure and authorization form;

- (b) Whether DEFENDANT's background check disclosure and authorization form complies with the Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.* ("FCRA");
- (c) Whether DEFENDANT violated the FCRA by including a liability release in its background check disclosure and authorization form;
- (d) Whether DEFENDANT violated the FCRA by procuring consumer report information based on invalid authorizations;
- (e) Whether DEFENDANT's violations of the FCRA were willful;
- (f) The proper measure of statutory damages and punitive damages; and,
- (g) The proper form of injunctive and declaratory relief.

20. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- (a) The persons who comprise the CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in this Complaint are common to the CLASS will apply uniformly to every member of the CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CLASS. PLAINTIFF, like all the other members of the CLASS, had a credit report and background check obtained on her behalf by DEFENDANT prior to obtaining valid authorization to do so in violation of the FCRA as described herein. PLAINTIFF and the members of the CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

1 (d) The representative PLAINTIFF will fairly and adequately represent
2 and protect the interest of the CLASS, and has retained counsel who
3 are competent and experienced in Class Action litigation. There are
4 no material conflicts between the claims of the representative
5 PLAINTIFF and the members of the CLASS that would make class
6 certification inappropriate. Counsel for the CLASS will vigorously
7 assert the claims of all CLASS members.

8 21. In addition to meeting the statutory prerequisites to a Class Action, this
9 Action is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2)
10 and/or (3), in that:

11 (a) Without class certification and determination of declaratory,
12 statutory and other legal questions within the class format,
13 prosecution of separate actions by individual members of the CLASS
14 will create the risk of:

15 1) Inconsistent or varying adjudications with respect to
16 individual members of the CLASS which would establish
17 incompatible standards of conduct for the parties opposing the
18 CLASS; and/or,

19 2) Adjudication with respect to individual members of the
20 CLASS which would as a practical matter be dispositive of
21 interests of the other members not party to the adjudication or
22 substantially impair or impede their ability to protect their
23 interests.

24 (b) The parties opposing the CLASS have acted or refused to act on
25 grounds generally applicable to the CLASS, making appropriate
26 class-wide relief with respect to the CLASS as a whole;

27 (c) Common questions of law and fact exist as to the members of the
28 CLASS, with respect to the practices and violations of the FCRA as

1 listed above, and predominate over any question affecting only
2 individual CLASS Members, and a Class Action is superior to other
3 available methods for the fair and efficient adjudication of the
4 controversy, including consideration of:

5 1) The interests of the members of the CLASS in individually
6 controlling the prosecution or defense of separate actions in
7 that the substantial expense of individual actions will be
8 avoided to recover the relatively small amount of economic
9 losses sustained by the individual CLASS Members when
10 compared to the substantial expense and burden of individual
11 prosecution of this litigation;

12 2) Class certification will obviate the need for unduly duplicative
13 litigation that would create the risk of:

14 A. Inconsistent or varying adjudications with respect to
15 individual members of the CLASS, which would
16 establish incompatible standards of conduct for
17 DEFENDANT; and/or,

18 B. Adjudications with respect to individual members of
19 the CLASS would as a practical matter be dispositive
20 of the interests of the other members not parties to the
21 adjudication or substantially impair or impede their
22 ability to protect their interests;

23 3) In the context of employment litigation because as a practical
24 matter a substantial number of individual CLASS Members
25 will avoid asserting their legal rights out of fear of retaliation
26 by DEFENDANT, which may adversely affect an individual's
27 job with DEFENDANT or with a subsequent employer, the
28 Class Action is the only means to assert their claims through

1 a representative; and,

- 2 4) A Class Action is superior to other available methods for the
3 fair and efficient adjudication of this litigation because class
4 treatment will obviate the need for unduly and unnecessary
5 duplicative litigation that is likely to result in the absence of
6 certification of this Action pursuant to Fed. R. Civ. Proc.
7 23(b)(2) and/or (3).

8 22. This Court should permit this Action to be maintained as a Class Action
9 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- 10 (a) The questions of law and fact common to the CLASS predominate
11 over any question affecting only individual CLASS Members
12 because DEFENDANT's employment practices were uniform and
13 systematically applied with respect to the CLASS;
- 14 (b) A Class Action is superior to any other available method for the fair
15 and efficient adjudication of the claims of the members of the
16 CLASS because in the context of employment litigation a substantial
17 number of individual CLASS Members will avoid asserting their
18 rights individually out of fear of retaliation or adverse impact on
19 their employment;
- 20 (c) The members of the CLASS are so numerous that it is impractical to
21 bring all members of the CLASS before the Court;
- 22 (d) PLAINTIFF, and the other CLASS Members, will not be able to
23 obtain effective and economic legal redress unless the action is
24 maintained as a Class Action;
- 25 (e) There is a community of interest in obtaining appropriate legal and
26 equitable relief for the acts of statutory violations and other
27 improprieties, and in obtaining adequate compensation for the
28 injuries which DEFENDANT's actions have inflicted upon the

1 CLASS;

- 2 (f) There is a community of interest in ensuring that the combined assets
3 of DEFENDANT are sufficient to adequately compensate the
4 members of the CLASS for the injuries sustained;
- 5 (g) DEFENDANT has acted or refused to act on grounds generally
6 applicable to the CLASS, thereby making final class-wide relief
7 appropriate with respect to the CLASS as a whole;
- 8 (h) The members of the CLASS are readily ascertainable from the
9 business records of DEFENDANT; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to
11 bring an efficient and rapid conclusion to all litigation of all FCRA
12 claims arising out of the conduct of DEFENDANT as to the
13 members of the CLASS.

14
15 **JURISDICTION AND VENUE**

16 23. This Court has jurisdiction over the PLAINTIFF's federal claims pursuant
17 to 28 U.S.C. § 1331(a) and 15 U.S.C. 1681p of the FCRA, codified at 15 U.S.C. § 1681,
18 *et seq.*

19 24. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (i)
20 DEFENDANT is subject to personal jurisdiction in this District and therefore resides in
21 this District; (ii) DEFENDANT maintains offices and facilities in this District; and, (iii)
22 DEFENDANT committed the wrongful conduct against members of the CLASS,
23 including the PLAINTIFF in this District.

24 ///

25 ///

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

For Failure to Make Proper Disclosure in Violation of the FCRA

[15 U.S.C. § 1681b(b)(2)(A)(i), *et seq.*]

(By PLAINTIFF and the CLASS and Against All Defendants)

25. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

26. DEFENDANT violated 15 U.S.C. § 1681b(b)(2)(A)(i) of the FCRA by including a liability release in the background check disclosure and authorization forms that PLAINTIFF and other CLASS Members were required to execute as a condition of employment with DEFENDANT's third party service providers.

27. The violations of the FCRA were willful. DEFENDANT knew that its background check disclosure and authorization forms should not include extraneous information that is prohibited by the FCRA, and acted in deliberate disregard of its obligations and the rights of PLAINTIFF and other CLASS Members under 15 U.S.C. § 1681b(b)(2)(A)(i).

28. PLAINTIFF and the CLASS Members are entitled to statutory damages of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

29. PLAINTIFF and CLASS Members are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

30. PLAINTIFF and CLASS Members are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

///

///

///

///

SECOND CAUSE OF ACTION

For Failure to Obtain Proper Authorization in Violations of the FCRA

[15 U.S.C. § 1681b(b)(2)(A)(ii)]

(By PLAINTIFF and the CLASS and Against All Defendants)

31. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

32. DEFENDANT violated the FCRA by procuring consumer reports relating to PLAINTIFF and other CLASS Members without proper authorization. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

33. The violations of the FCRA were willful. DEFENDANT acted in deliberate disregard of its obligations and the rights of PLAINTIFF and other CLASS Members under 15 U.S.C. § 1681b(b)(2)(A)(ii).

34. PLAINTIFF and the CLASS Members are entitled to statutory damages of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

35. PLAINTIFF and CLASS Members are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

36. PLAINTIFF and CLASS Members are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

PRAYER FOR RELIEF

WHEREFORE, the PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CLASS:

A) That the Court certify the First and Second Causes of Action asserted by the CLASS as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);

- 1 B) A determination and judgment that DEFENDANT willfully violated 15
2 U.S.C. § 1681(b)(2)(A)(i) and(ii) of the FCRA by improperly including
3 liability release language in its background check disclosure and
4 authorization form and by obtaining consumer reports on PLAINTIFF
5 and CLASS Members without having proper authorization to do so;
6 C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages
7 to PLAINTIFF and the members of the CLASS in an amount equal to
8 \$1,000 for PLAINTIFF and each CLASS Member for DEFENDANT's
9 willful violation of the FCRA;
10 D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to
11 PLAINTIFF and other CLASS Members;
12 E) An award for costs of suit and reasonable attorneys' fees pursuant to 15
13 U.S.C. § 1681n(a)(3); and,
14 F) Such other and further relief as the Court deems just and equitable.
15

16 Dated: August 4, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

17
18 By: /s/ Norman B. Blumenthal
19 Norman B. Blumenthal
20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: August 4, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff